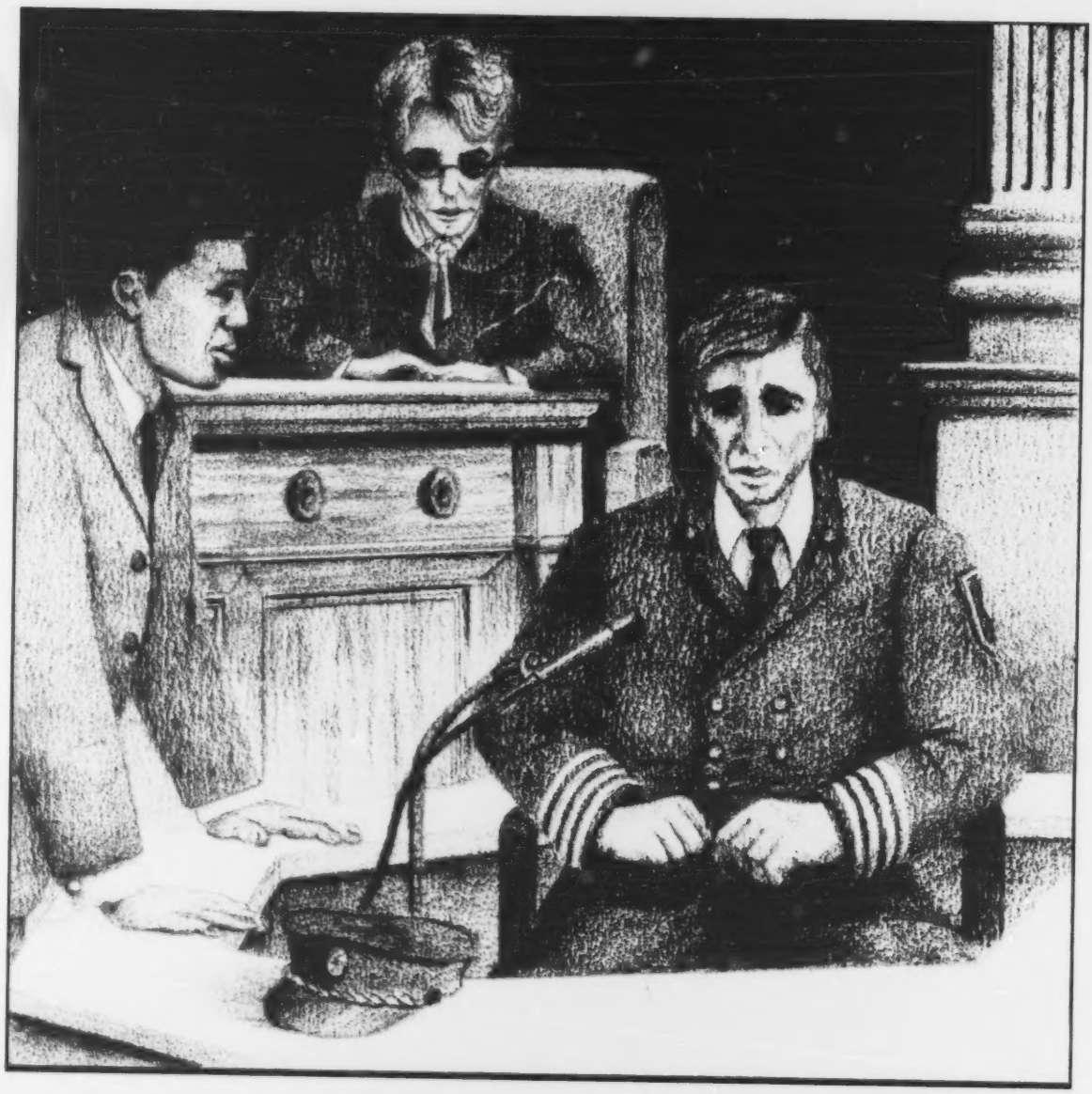
RISK MANAGEMENT for the FIRE SERVICE



JUSTICE INSTITUTE
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FIRE ACADEMY

Province of
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OFFICE OF THE FIRE COMMISSIONER

FIRE ACADEMY

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RISK MANAGEMENT

FOR THE

FIRE SERVICE

Justice Institute of British Columbia
Fire Academy

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PREFACE

Today's Public Service organizations are held increasingly liable by the people they serve and the personnel they lead. This increase in claims comes at a time when many jurisdictions are having trouble obtaining affordable liability insurance. Some communities have opted for some form of pooled or self insurance to satisfy their need for coverage. Other communities are going without adequate insurance coverage and are more vulnerable to financial loss as a result of non-insured claims. The implications of these trends bear a grave message managers. Be prepared!

Fortunately, there are techniques for protecting your jurisdiction from claims of negligence. The most successful approach is borrowed from the field of business. Risk Management provides a practical answer to the threat of liability and, according to some, is seen as the next megatrend.

One aim of this Guide is to provide you with realistic tools to use immediately in managing risks and liability exposures. Yet, there are no certain answers, no cookbook formulas for success that will satisfy every need. The basic principles explained here must be adapted to your situation, and your success depends on the energy and interest you bring to the topic.

If your Fire Department has been involved in litigation we would like to know the details. Send an overview of the case to:

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INTRODUCTION

Event: Two fire department emergency medical technicians attended the scene of an injury, examined the injured person, then drove him to a local home instead of a hospital. The injured man was admitted to hospital the next day for an emergency brain operation, and subsequently died from his injuries.

Loss: The fire personnel and the city were sued for negligence. Although the employees were found immune from liability, the city was held liable for the death.
Case: Taplin v. Town of Chatham, Mass. 1983.

Event: An official of the municipal Fire Department assured a private party that a certain building complied with local fire and health regulations. The citizens purchased the building on the basis of this assessment, then later received an order to install a great deal of fire prevention and protection equipment at a significant cost.

Loss: The building owners successfully sued the municipality on the basis that the fire official was considered an expert and authority on local fire regulations. The plaintiffs recovered their expenses of $20,000.
Case: Jung and Jung v. Burnaby, British Columbia et al., September 15, 1978.

Event: A fire truck responding to an emergency collided with a van during a heavy rainstorm at the intersection of two busy Ottawa streets. The impact of the collision sent the fire vehicle into the front steps of a tailor shop, killing two men who had sought shelter from the rain. A pedestrian was also injured; she sustained a fractured spine, mild brain damage and epilepsy.

Loss: The injured woman sued the City of Ottawa, the fire truck driver, the Ottawa Fire Chief, and the van driver for over $5 million. Settlement awarded plaintiff $1 million.
Case: Twomey v. City of Ottawa, Ontario et al., May, 1983.

These real-life events have two things in common. First, each instance opened a municipality to potential claims for liability. Second, each lawsuit could have been avoided.

The threat of claims and legal suits for negligent behaviour on the part of fire personnel is very real. Almost every activity within the Fire Service subjects the organization to potential liability. Doing something that should not be done or failing to fulfill a duty can expose fire personnel, the Fire Department and the municipality to the risk of a lawsuit.

Authorities are calling the recent rise in legal action the newest epidemic to hit the Fire Service. Some Chiefs have pointed to the complexity of today's Fire Service — hazardous materials control, emergency medical services, public education responsibilities — as the factor that has made their Departments more vulnerable to legal action. Others cite the growing tendency to sue especially where a "deep-pocket" organization may be involved. "Deep pocket" refers to the view by a plaintiff that the entity to sue is the one with the most money available. In the U.S., liability claims against municipalities increased by 658% from 1976 to 1985.

Regardless of the reasons, liability is and should be a major concern of every officer. But exactly what is negligence? What practical steps can be taken to protect a Fire Chief and Fire Department from these risks?

LEGAL LIABILITY

Legal liability is no different from personal liability. It means that you are responsible for your actions. But with legal liability a court can determine to what extent you are responsible by affixing a percentage of liability and possibly a dollar figure that represents the degree of responsibility for your action.

An incident in which a loss has occurred may give rise to a complaint from the person or persons affected. The complaint, hopefully, will be resolved through informal mediation. If, however, a formal claim is made against the municipality's insurance underwriter or against a self-insurance fund, then resolution must be sought by determining to the satisfaction of both sides, who is liable, and to what extent, and the amount of loss to be compensated by insurance. If an agreement cannot be reached, the aggrieved party may resort to court where a legal action may be commenced against the employee or employees involved and, in most circumstances, the municipality as well. The legal action may be commenced in Small Claims Court, County Court or Supreme Court depending upon the amount of the claimed loss. To everyone's advantage, most of the claims made against municipal insurance are settled out of court. And the few that are not become the legal actions.

The legal action most often taken against a municipality and its employees is called *negligence*. In law, negligence is the failure to exercise the care that a prudent person usually exercises. Negligence is most often called a civil action to differentiate it from a criminal charge. A civil action arises as a result of an unresolved dispute between individuals or groups. It is initiated by the aggrieved (injured or offended) individual or group and is tried by the civil process, which is less formal than the criminal process.

A finding of liability against the defendant need only be established on the civil standard which is "on a balance of probabilities" rather than "beyond a reasonable doubt" as in criminal actions. A finding of liability leads to an order for compensation. Contrary to criminal actions where "guilty intent" is necessary for a criminal charge to be laid, in a civil action such as negligence the action can proceed even when the defendant was acting in good faith, in the best interests of the plaintiff. Canada has extensive legislation concerning almost every area of human conduct. This legislation forms a portion of the law, the legal statutes. The other and arguably more important part is the accumulation of judicial decisions referred to as *case law* or *common law*. These judicial decisions perform two major functions:

- They interpret the wording of the statutes to apply them to the various situations that arise under statute
- They "create" law in those areas not covered by statute

Whenever statute and common law exist in regard to the same area of law, the statute law must prevail. Occasionally, the law-makers create a statute specifically to override a judicial decision or group of decisions found unsatisfactory or contrary to the prevailing opinions in government. The advantages of common law include the tendency of the courts to follow trends of public opinion, and to do so more quickly than legislation. The major disadvantage of the common law is the potential for ambiguity and confusion that can exist when conflicting judgments occur or when legal principles applied in a case are not clearly set out.

In English law, and therefore in Canada, a civil action in negligence is called a *tort*. A tort is a private or civil wrong or injury and applies except where a contract exists. Tort has been created over centuries by common law, with little statutory interference. Examples of the tort of negligence abound: injuries in a car accident, damage to a fence when a neighbour's tree falls, errors in medical diagnoses leading to unnecessary surgeries and, relevant to the Fire Service, failures on the part of public authorities and their employees (fire fighters) to adequately advise, serve, or protect the citizens. We will look at the application of statute later.

There are three elements that must be satisfied before a plaintiff can successfully claim for damages for the negligence of the defendant:

1. *It must be shown that the defendant owed a duty of care to the plaintiff that has been breached by the defendant.* For a duty of care to exist, the relationship between the defendant and the plaintiff must be one in which it was reasonably foreseeable that the plaintiff was likely to be injured by a breach of the defendant's duty of care. The "relationship" required may be as remote as the physical proximity of the plaintiff and the defendant, where the defendant's fire truck strikes the plaintiff in a crosswalk. Here, the duty of care exists because the plaintiff's injuries were reasonably foreseeable by the defendant. The relationship exists between the citizen and the fire fighter when the citizen's home is burning. In this case, the fire fighter, in the capacity of fire fighter, owes a "duty" to the citizen.

A duty exists when it is stipulated in law. For example, in a bylaw that reads "the Fire Chief shall inspect . . . " A duty to inspect is imposed on the Fire Chief. A failure to inspect leading to an action for negligence could result in a Court finding that a duty of care existed between the Fire Chief and the person who was injured or suffered a loss as a result of the failure to inspect. Mandatory wording that can lead to a finding of duty of care by the Courts should, if appropriate, be eliminated from bylaws, and substituted with words such as "may."

2. *Once a duty of care has been established, it is necessary to determine whether the defendant has failed to conform to the standard of care imposed by the law of negligence.* The test of "reasonableness" is applied here, taking into consideration the defendant's level of knowledge and expertise. For example, where the duty to inspect premises for fire hazards is breached by the failure of the fire inspector to detect faulty wiring that ultimately leads to a fire, the Court would determine whether this failure was reasonable, given the circumstances and the expected level of expertise of a fire inspector.

3. *Finally, once it has been established that a duty of care was breached by the defendant due to his failure to meet the standard of care, it remains to be determined whether there was loss or damage suffered by the plaintiff as a result of the negligent conduct of the defendant.*

   (A fourth element, the *lack* of justification for the act is sometimes added.)

Once the tort of negligence has been established, it falls to the judge or jury to determine among the parties involved the extent to which each of them may be liable for the losses incurred by the plaintiff. In some cases, the plaintiff is found to have contributed to the loss in some way, for example, by not wearing a seat belt that would have reduced injuries to the plaintiff in a motor vehicle accident. Such a finding is called contributory negligence, and it is expressed in terms of proportionate negligence. The plaintiff may be 25% to blame for his or her injuries, and thus would only recover 75% of the amount awarded.

Where there are a number of defendants, there may be a determination that one defendant was more negligent than another, or had the last reasonable opportunity to avoid the injury or loss, or was less able to foresee the risk than another defendant. In such cases, there may be an apportioning of liability among defendants. Or, all defendants may be held equally liable for the loss. In any case, they are all "jointly and severally liable" for any damage award. This means that *all* are liable for all of the award, and *each* is liable for all of the award. In circumstances where a defendant is unable to pay the proportion awarded against him or her, that portion is payable by the other defendant or defendants.

Finally, in circumstances where an employee, in the course of carrying out the employer's business, causes damages through negligence, the employer also may be liable for the damages. This is called vicarious liability.

If, however, the employee is acting beyond the instructions or directions of his or her employer, the employer is not joined as a defendant to the negligence action, and the negligent employee will bear the liability for damages alone.

Once the proportions of liability have been established, the court must determine the extent of the damages. If it is possible to restore the plaintiff's circumstances to those that existed before the action in negligence, then this would most likely be the content of the award. However, most of those cases do not reach the court due to the ease with which the plaintiff's position can be restored. The only other type of award that remains, then, is the monetary award. This means that the plaintiff will receive money to compensate for losses. In other words, outside of restoring the plaintiff's original position, money is the only other form of compensation available even though it may not be capable of true compensation. How can anyone put a dollar value on the loss of a family member or on a permanent disability?

In an action for negligence, where the plaintiff suffered only property damage, the court would determine the cost of repair or replacement and this amount would form the damage award. If the plaintiff suffered loss of income, the court would determine the actual loss of monthly wages, or the estimated loss in cases of irregular income. If any portion of that which was lost is insured, whether it is property or income, the court is not made aware of such coverage, so that the insurance cannot be said to be a consideration in awarding damages.

However, where the plaintiff has suffered a physical injury perhaps requiring surgery, or a permanent disability or disfiguring scar, or emotional distress, the court has a greater challenge in determining the appropriate monetary award. The court would look at the age, occupation, income and lifestyle of the plaintiff, the nature of the injury, the likelihood of complete recovery, the amount of pain and suffering the plaintiff has endured and will continue to suffer, and the effect on the plaintiff's future earning power, lifestyle, and happiness. The court will also examine similar cases to determine what other judges have awarded. From these considerations, the court will set a figure which is believed to most appropriately compensate the plaintiff, recognizing in some cases that no amount of money can adequately compensate the plaintiff for severe loss of enjoyment of life.

In cases of loss of life, the same considerations apply, but are directed towards the relatives of the deceased.

In addition to compensation for property damage, loss of income, and personal injury loss, and depending on a number of considerations, the court may award *costs* to the plaintiff. This means that a portion of the plaintiff's legal costs will be paid for by the defendants. The portion is usually in the neighbourhood of 50%, but in exceptional circumstances can amount to 100% of the legal costs, and in extremely rare situations, the judge may award double or triple costs, as a form of punitive damages against the defendants.

Risk Management

The risk of liability suit or claim is inherent in the Fire Service. There is no practical way to eliminate this risk entirely, but much can be done to reduce the likelihood and severity of liability claims. The approach to protecting your organization from liability hazards is embodied in the concept of *risk management.*

Risk management, for a municipal department, is *the process of protecting a government's assets from possible loss.* More significant, perhaps, is the underlying objective of providing for and ensuring public safety in all municipal operations. Dissecting the term may help you understand its application to the Fire Service.

Risk is used in everyday conversation, and has acquired a connotation we think we understand. Here are some examples of how the word is used:

> "Lifeguard Not On Duty — Swim at Your Own Risk."
> "That's a risk I'm willing to take."
> "You don't get anywhere without taking risks."

Risk is the potential for loss. It refers to the probability of an event that causes damage or injury or some other type of adverse consequence. In other words, risk is the uncertain likelihood that an unwanted event may happen.

There is always risk where someone or something of value can be lost. A fire vehicle, for example, has financial value as the property of the Fire Department, not only because it can be sold, but also because it enables the organization to meet its objective. The value of key persons in the Fire Department is that they possess superior knowledge, experience and skill in leading others. From a Fire Department perspective everything of value falls into these four broad categories:

- *Property*, including the Fire Service vehicles, equipment, structures materials and supplies
- *People*, Fire Service personnel, employees and volunteers, who are vitally important to the ongoing success of the organization
- *Net Revenues*, the total budget for the Fire Department minus its expenses for a given period
- *Freedom from Liability*, an important value to be protected because legal liability can impose heavy burdens on an organization

There are two components to risk — probability (or frequency) and consequence (or severity), and they are sometimes related in a mathematical expression:

Risk = Probability x Consequence

Simply put, this says the greater the probability of an adverse event, the greater the risk. You are more likely to fall from a tight rope wire than from a sidewalk. Therefore, the risk is greater. The equation also

suggests that the more severe the consequence of the event, the greater the risk. The injury of falling from a wire that is three storeys high would most likely be greater than from one that is at knee height. The risk is greater.

The word *management* suggests a *structured and organized approach that relies on proven techniques to control systems, events and people.* Management takes a "pro-active" rather than reactive approach to problem solving. It relies on analyses and well-considered action to control potential loss situations.

The term *risk management*, then, refers to a deliberate effort to understand and control risk, to reduce both the probability that something might go wrong and the effects if an adverse event does occur. Because risk entails uncertainty, no matter what you do or how much money you spend, you can never totally eliminate risk. You must live with the potential for loss, but appreciate that actions can be taken to control risks. Risk management controls an organization's activities to minimize losses and ensure public safety.

One other term is important in understanding risk management, and it is one that you will see often in this Guide: *exposure.* The word refers to *a possible pathway or sequence of events that can lead to a loss.* Standing on a high tightrope is an obvious exposure to risk. Driving a car can expose you to risk, as can simply walking down the street or eating in a restaurant. The concept of exposure is examined further in Section 3, where you will learn about some common exposures of the Fire Service. The point to remember now is that the term *exposure* refers to a threat — a possible action that can lead to a loss of some kind. Identifying exposures is an essential step in managing risks. You have to know what might happen in order to prevent or control events.

The concept of reducing risk is not new. People have been managing risks in some form since human beings first decided to keep their hands out of the cookfire. It was not until 1931, however, that the comprehensive view of risk management was proposed specifically for industry. Risk management has been a successful specialty within the general field of business management ever since. Within the last decade, this comprehensive approach to controlling potential losses spread to public service organizations at the municipal level of government.

Today, organizations without a formal risk management program often deal effectively with risk. Your Department, for example, requires that fire personnel wear full protective clothing when responding to a fire. This safety rule controls risks for fire fighters by reducing the probability that they will be exposed to high temperatures. You probably have policies in place that call for fire fighters to be trained, equipment to have regular inspections and fire apparatus drivers to hold a current license. All of these policies are examples of reducing risk. Risk management expands these strategies and provides a structured approach to safety and loss control. It encourages a *comprehensive and detailed* examination of the practical and economic ways of dealing with potential losses.

Regardless of the organization it serves, the goal of risk management is straightforward: to protect an organization and its members from loss. There is no explicitly right or wrong way to conduct risk management, as long as certain key objectives are met.

Any organized and rational approach to management must respond to an established purpose and clearly defined objectives. The objectives that guide the development of risk management programs add detail to the purpose and define the limits of its intent. The objectives also list what an organization hopes to accomplish in controlling losses. These objectives may include an attempt to:

- Minimize public risk from municipal operations
- Enhance employee safety
- Reduce losses of equipment and materials
- Examine new programs for potential risk
- Minimize the costs of risk

Five steps are central in managing risks in any organization:

1. *Identify and Evaluate Exposures.* Managing risks requires an understanding of potential exposures, of the many ways an organization can suffer losses. Typically, this information comes from a record of past losses or from an analysis of operations. Some common liability exposures for a municipality include:

- Accident at municipal swimming pool or recreation centre
- Failure to perform complete building inspection
- Giving incorrect information about planning or zoning bylaws
- Accident involving municipal vehicles
- Failure to maintain essential utilities and sidewalks
- Inadequate or defective water mains, sewers or drains

Each of the exposure areas is usually evaluated in terms of the frequency (or probability) of occurrence and the severity of possible loss to determine high priority areas that need immediate attention.

2. *Examine Alternative Risk Management Techniques.* There are two principal protective approaches that can be applied to a known exposure to manage risk. First, there are control measures that allow an organization to avoid or minimize potential losses. These measures are collectively known as *risk control* techniques. Risk control suggests avoiding the exposure altogether if possible, or reducing the probability of loss, reducing the severity of consequence should a loss occur, or transferring the loss to another organization.

The second set of techniques involves *risk financing*, an approach where the actual losses are paid for after the event. This area of risk management deals with the insurance side of the question. Either an organization assumes the financial responsibility for losses (retention) or they contract with an outside agency to pay for losses (commercial insurance). In either case, losses must be financed somehow.

3. *Select and the Best Techniques.* Each exposure is commonly treated by a blend of risk control and risk financing. In other words, each potential area of loss will be examined for specific programs that can reduce the probability or consequence of loss, and each type of loss will be financed in some way. Selecting appropriate techniques calls for you to judge the effectiveness of each measure in reducing risk, and balancing this against the potential costs of each technique.

4. *Implement the Selected Techniques.* Implementation requires you to develop the technical details of the risk reduction measure. Fire Service personnel should receive explicit instructions regarding what to do, how to do it and when to complete the assignment. Some techniques, in addition, may require the co-operation or support of other municipal managers outside the Fire Department. Influence and persuasion may be required to implement selected techniques.

5. *Monitor and Revise Approach.* Risk management is a dynamic and thorough process that deals with constantly changing facts and directives. Selected techniques must be reviewed periodically to reflect changing exposures and control methods. Applied measures must be monitored to ensure they are meeting the stated objectives, and that they are cost-effective in their implementation. Risk management techniques must be routinely upgraded to initiate needed improvements and to make the most of the resources available.

A successful risk management program will use a combination of techniques that support each other rather than focus on just one approach. Risk control techniques hold risk financing costs down. Risk financing is essential to cover the losses that will inevitably slip through the controls. The key objective is to adopt a plan that makes the best use of municipal funds, whether investing in risk control or financing losses that do occur.

Risk management has proven especially useful in controlling losses from liability claims. In the past, municipal organizations could rely heavily on the financing side, primarily because liability insurance was affordable. The insurance crisis has changed all that. Some potential exposures may no longer be insurable at *any* price, and many municipalities are forced to insure themselves.

Municipal self insurance relies on a keen awareness of risk control measures to reduce overall costs of running a local government. Municipal risk management is most effective if responsibility is assigned to one person, sometimes called a Risk Manager or Loss Control Officer. A Risk Manager is responsible for leading a municipality in all aspects of liability protection, but may not necessarily perform the steps personally. A Risk Manager's tasks include enlightening all personnel and encouraging their continued attention to safety and other liability issues.

Many municipalities have a dedicated Risk Manager on staff, and have adopted specific policies designed to control liability risks in the organization. The municipal Risk Manager may seek a counterpart in each municipal department, such as engineering, planning or Fire Departments.

LIABILITY

There was a time when the principle that "the King can do no wrong" applied not only to the monarch, but to his agents and servants. The present state of the law is that although all levels of government may maintain some statutory immunity from civil liability, they are as liable in negligence as any member of the general public. This means that when a person suffers a loss as a result of the negligent conduct of an employee of a municipality, regional district, province, state or the federal government, the employee and the employer can be sued for negligence. Employees of a Fire Department are no exception.

However, each level of government has in its statutes provisions allowing for immunity from civil liability, or requiring permission of the legal representative of that government, before civil action can be taken. A relevant example of this is section 55 of the British Columbia *Fire Services Act*, which reads:

> No action or proceeding shall, without the leave of the Attorney General, be brought or taken against the Fire Commissioner, or a local assistant to him or an officer on his staff for anything done or omitted in the performance or intended performance of duties under this *Act*.

This section creates an obstacle to an action in negligence against the Fire Commissioner or a Local Assistant. And it makes for interesting speculation as to whether a Fire Chief is acting as a municipal employee, or as a Local Assistant, and therefore subject to this restriction in commencing an action against him.

A public authority is "vicariously liable" for the negligent actions of its employees, so long as the employee was acting within the course of his or her duties of employment. Vicarious liability means that the employer is liable for the negligence of employees. It is suggested by some that the "deeper pocket" principle may apply, and some plaintiffs will not even bother to name the employee as a defendant, due to the belief that the public authority has the better capacity to pay damages. However, if it is determined that the employee was acting beyond his or her duties, in the course of the negligent act, the employee is personally and solely liable for the losses caused. For example, if a fire fighter is driving a fire truck with flashing lights and siren operating, and is proceeding carefully through an intersection against a red light, as required by s. 118 of the British Columbia *Motor Vehicle Act*, c. 288, when an accident occurs as a result of his actions, he *and* his employer may be sued for a negligent act for any subsequent damage. If, however, he is not operating the flashing lights and siren, or is operating only one warning device and not the other in direct contravention of his duties, it may be determined that he was not acting within the course of his duties, and in this case, he would be solely liable for any losses which his negligent conduct caused.

Although the terms "employer" and "employee" have been and will be used in this material, the law makes no differentiation between a salaried worker and a volunteer. A volunteer fire fighter who acts negligently is no less likely to be sued than a paid fire fighter would be. His "employer" would be the level of government to which he volunteers.

Amendments to the *Municipal Act* that were passed in British Columbia may prevent actions for damages against an officer or employee of a municipality or regional district, or a volunteer fire fighter (among others). It states that:

> No action for damages lies or shall be instituted against a municipal public officer or former municipal public officer for anything said or done or omitted to be said or done by him in the performance or intended performance of his duty or the exercise of his power or for any alleged neglect or default in the performance or intended performance of his duty or exercise of his power.

This will allow municipalities to indemnify an officer, employee or volunteer fire fighter of a municipality or regional district who is acting within his or her course of duties. The municipality or regional district will bear the financial burden entirely. It does not protect the negligent officer, employee or volunteer who exceeds his or her employment duties. There is also no protection for willful, malicious or dishonest misconduct on the part of the officer, employee or volunteer.

British Columbia's *Good Samaritan Act*, c. 155, states:

> *No liability for emergency aid unless gross negligence*
>
> *1. A person who renders emergency medical services or aid to an ill, injured or unconscious person at the immediate scene of an accident or emergency that has caused the illness, injury or unconsciousness is not liable for damages for injury to or death of that person caused by his act or omission in rendering the medical services or aid unless he is grossly negligent.*
>
> *Exceptions*
>
> *2. Section 1 does not apply where the person rendering the medical services or aid*
> *(a) is employed expressly for that purpose; or*
> *(b) does so with a view to gain.*

Therefore, as the law stands today in British Columbia, fire fighters at all government levels, whether full-time employees, part-time employees, or volunteers, may be sued for their negligent conduct. It does not matter whether the negligence arose as a result of "misfeasance," which is causing harm by an action, or "nonfeasance," which is causing harm by not acting at all. If the negligent conduct fell within the performance of the fire fighter's duties the level of government that employs the fire fighter will become co-defendant. If the conduct did not fall within the performance of the fire fighter's duties, he will face the legal action, and pay any damages awarded, alone.

Three elements must be satisfied before a plaintiff can successfully claim for damages for negligence.

1. It must be shown that the defendant owed a *duty of care* to the plaintiff that has been breached by the defendant.

2. Once a duty of care has been established, it is necessary to determine whether the defendant has failed to conform to the *standard of care* imposed by the law of negligence.

3. Once it has been established that a duty of care was breached by the defendant due to failure to meet the standard of care, it remains to be determined whether the plaintiff suffered *loss or damage* as a result of the negligent conduct of the defendant.

   (If the fourth element, the lack of justification, is included, then it must be determined that the defendant was not justified in acting.)

There are a number of examples of potentially negligent actions that relate to the activities of the Fire Service. For example, one frequent exposure to negligence involves motor vehicle and fire truck collisions. If a fire truck proceeds to a fire with flashing lights and siren operating, travels through an intersection against the red light, and collides with a car, the person in the motor vehicle may commence an action for negligence against the fire truck driver and the driver's employer. The Court would first determine whether there was a duty of care on the fire truck driver in relation to the plaintiff.

In this case, there would be sufficient evidence to establish a duty of care because the loss or damage suffered by the plaintiff was reasonably foreseeable as a result of the driver's actions. Second, the Court would determine whether the actions of the driver met the standard of care reasonably expected of the driver of a fire truck heading to a fire.

Finally, the Court would determine whether there was loss or damage suffered by the plaintiff as a result of the conduct of the driver of the fire truck.

Negligent Actions or Negligent Failure To Act

For purposes of illustration, apply these three elements to other Fire Service activities where there has been some loss or damage caused by negligent actions or negligent failure to act. For example:

- Fire station equipment is lent to a nearby civilian and injury to him results from its use. Here, the Fire Service employees may owe a duty of care to the borrower if it would be reasonably foreseeable that injuries may result in the use of the equipment, and if the employees fail to warn the borrower of the dangers of such use.
- Environmental damage is caused when fire fighters flush a large amount of gasoline from a bridge after a motor vehicle accident, and the runoff enters a salmon spawning creek. Again, it would be reasonably foreseeable that such damage may result and there is a duty of care owed by the Fire Department to the community and its environment. It may be determined that the flushing of the gasoline in this manner did not meet the standard of care reasonably expected.
- Failure to keep equipment in repair, resulting in the inability to suppress a fire. There is a duty owed to the citizens. Failure to keep equipment in repair would be an unreasonable breach of the standard of care owed to the citizen.
- Failure of the Fire Chief to carry out the stipulations of a municipal bylaw that states, for example, "The Chief shall review the plans, and inspect the construction of all new buildings and structures in the municipality, other than single family dwellings, in order to establish that the fire protection facilities and equipment are in compliance with all appropriate regulations, codes and standards." Consider a case where a fire destroys a new apartment building shortly after its tenants have moved in, and it is determined that the sprinkler system had not been installed properly, and had malfunctioned at the time of the fire, allowing more damage than would otherwise have occurred. It is then determined that the Fire Chief, although notified of the new apartment construction, had not inspected or ensured an inspection of the construction as required by the municipal bylaw. The wording of the bylaw, specifically the word "shall," imposes a duty on the Fire Chief to carry out the requirements of the bylaw. A Court may find that the duty of care existed, thereby satisfying the first of the three elements of negligence. It only remains for the Court to determine if the Fire Chief's failure to inspect the apartment building was a failure to conform to the standards of care owed to the building owners and tenants, and if such failure led to the loss or damage suffered.

Figure 2.1 illustrates the basic formula for what may and what may not amount to a claim of negligence for actions or for the failure to act.

Note that all three elements must be in place for a finding of liability to be upheld. Remove any one of them and a claim of liability will not likely be successful.

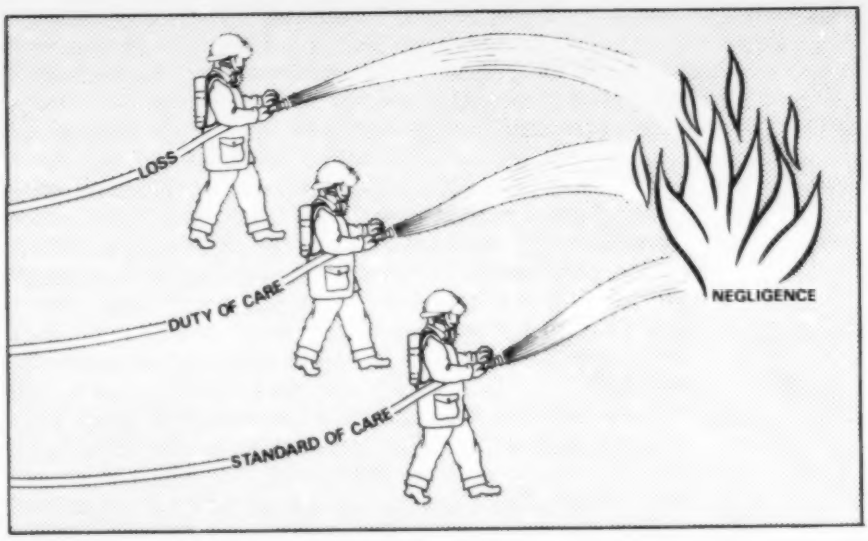

Figure 2.1 *The Three Elements of Negligence*

Negligent Misstatements

There is another type of activity carried out by some members of the Fire Service that may lead to negligent actions. This activity centers around the giving of incorrect information, and is called "negligent misstatement." In *Jung and Jung v. Burnaby et al.* [1978] 6 W.W.R. 670 (B.C.S.C.) an official of the municipal Fire Department lead Mr. Jung to believe that a building complied with local fire and health regulations. Relying on the official's representation the Jung's bought the building. A few months later the municipality ordered the Jung's to install a great deal of fire prevention and protection equipment in order to comply with the *Fire Marshall Act*. The Supreme Court of British Columbia held that the plaintiffs were entitled to recover because, according to the judge, "The municipal official knew or ought to have known that Mr. Jung did not have any understanding of the relevant regulations and trusted him as a responsible municipal official." Burnaby was joined as a defendant because the Fire Department official was acting within his employment duties.

When a person relies to his detriment on information supplied by a government employee, which subsequently is found to be incorrect, an action lies against the employee and, perhaps, against the employer, for negligent misstatement. In addition to the three elements set out above, this form of negligence requires evidence that the employee who provided

the information possessed a special skill, that the employee knew or ought to have known that reliance was being placed on this skill and judgment, and that the plaintiff relied upon the information and as a result suffered a detriment.

There have been a number of other cases involving negligent misstatements of government employees in areas not connected with the Fire Service. However, the principles established in them will apply directly to future cases involving the Fire Service. The Courts are trying to strike a balance between the desirability of such officials giving information to the citizens, and instilling in the officials a sense of responsibility for the information they impart. In *Inland Feeders Ltd. v. Virdi and Thompson-Nicola Regional District* (1982) 32 B.C.L.R. 45 (B.C.C.A.), where incorrect information was given by the Regional District Director with regard to the permissibility of locating a feed lot in an Agricultural/Forestry zone, the Court ruled:

> It is one thing to say that municipal officers must be careful and skillful and reasonably competent, and that if they are not they may be liable in negligence. It is another thing to say that they must be right in their representations or they and their municipality will both be liable to compensate anyone who suffers loss by acting on an incorrect representation . . . (To make the defendant in this case liable) would put an end to all open communication with municipal officers.

With this in mind you can conclude that no liability arises from giving carefully considered and researched advice simply because, in looking back, it can be seen that the advice was wrong.

"Policy" Decisions and "Operational" Decisions

There is one more special concern with regard to the susceptibility of governments and their employees to actions in negligence. There has now developed a string of judicial decisions that prevent a government from being held liable for "policy" decisions, as opposed to "operational" decisions. "Policy" decisions are those that are made by the governing council or board, and may be based on such considerations as a budget. "Operational" decisions are those made at lower levels of the hierarchy, and mainly deal with implementing policy and carrying out the directives of supervisors.

Consider, for example, a municipal council that passes a resolution to stop requiring burning permits from residents who wish to burn rubbish in their yards, due to the cost of issuing and enforcing such permits. If a house fire occurs as a result of inadequate safety precautions being taken at a back yard rubbish fire, the municipality and its employees could not be held liable for any loss or damage because the decision was made at the policy level. The courts call this "discretion," meaning that "the decision is one for the authority or body to make, and not for the courts." *Kamloops v. Nielsen, Hughes and Hughes* [1984] 5 W.W.R. 1 (S.C.C.).

If municipal council votes to reduce the number of personnel assigned to each pumper, that is a "policy" decision, not subject to legal action if loss or damage results.

If, however, the Fire Chief decides to create a new work schedule for the fire fighters and leaves a busy fire hall short of personnel, and this shortage results in insufficient fire fighters to attend a major fire, this operational decision would be subject to a legal action for negligence. Unfortunately there has been no clear indication from the courts which decisions are "policy" decisions and which are "operational" decisions.

This distinction between "policy" level decisions and "operational" level decisions is important because decisions that have to be made, which may lead to a negligence action should, so far as possible, be elevated to "policy" decisions to remove the susceptibility to legal action. For example, if a Fire Chief is having difficulty enforcing an area of the bylaws due to a shortage of personnel it may be wise to have the municipal council or regional board pass a resolution not to enforce that section due to budgetary concerns. This would remove the potential for civil action should an incident occur as a result of non-enforcement.

FIRE SERVICE RISK MANAGEMENT

The threat of liability loss is real in the Fire Service. Whether you operate a small volunteer force or command a Department with hundreds of paid personnel, your organization is exposed to the potential risk of liability. But what can you do? How can you protect your Department? What specific actions can you take today to reduce this threat?

The remainder of this Guide will consider the practical applications of risk management for the Fire Department, specifically, to reduce the risks of liability. Liability risk management does not require a new "system" or demand a reorganization of your Department. You are already practising some elements of risk management and you will want to continue these. You will learn, however, a new approach that will increase the amount of attention you pay to certain policies and procedures in the Department. You will develop an interest in the detailed and comprehensive examination of all Fire Department activities. Most importantly, you will develop an awareness of what can go wrong and an intuitive sense of how to prepare for and prevent these instances.

Principles of Risk Management

You will learn about some specific steps to follow in risk management for your Department, but first take a look at the big picture represented by the five principles shown below. They have been extracted from the recommendations of others who have learned from personal, and often painful, experience and are offered as guidelines for you to keep in mind.

Be Prepared. The first and most important fact of modern life is that anyone can file a lawsuit against your Department at any time. You may even be entirely within your rights and *still* be sued. The only assured way to entirely avoid liability is to cancel the Fire Service but this will not provide fire protection to the public. Liability means responsibility, and as long as you are Fire Chief, you are responsible for your Department.

Our democracy guarantees that an accounting be made when a wrong, or even an alleged wrong, has been committed. Accounting may take the form of a lawsuit. You will be required to answer allegations of negligence made against you and your personnel. If you refuse, you will lose automatically when a default judgment is made against you.

Preparation is the key, and if you do nothing else in risk management but prepare in advance for litigation, you will do well. Preparation means keeping careful records, knowing what to do and what *not* to do, and making sure that all personnel under your charge are well trained, and know their responsibilities and duties. It means talking with others who have been there and learning from their experiences. Preparation means discovering what to expect from a judicial inquiry into negligent actions and establishing a concrete line of defense that can offer your Department and your municipality realistic protection.

Document Everything. A carefully prepared risk management file can be presented in court as evidence of your professionalism, your thoughtful deliberation of policies and the care you exercise in meeting your responsibilities. You do not have to establish a "paper bureaucracy" on top of your already burdensome paperwork. Just protect yourself and your Department by recording in print, either by letter or internal memo, the essential decisions you make.

Documenting your requests for funding, the policies you adopt, the training provided to your personnel, and your directives on equipment maintenance is an essential step in demonstrating the reasonableness of your precautions. Your municipal solicitor will assist you in identifying the types of actions that should be recorded.

Be Comprehensive. Risk management calls for a methodical and systematic process that attempts to anticipate all possible exposures and all feasible management techniques. It is impossible to say you have considered everything, but this should not stop you from completing a comprehensive and detailed examination of risks. The *process* of understanding and managing risks is often more valuable than the end product. Learn to expect the unexpected. Anticipate some of the more plausible situations, then go back periodically and review your situation. Above all, satisfy yourself that you are doing all that can be done to reduce the incidence of negligence and the threat of liability.

Encourage Professionalism. People are imperfect and will make mistakes, but if you act with reasonable foresight, skill and care, you can meet your legal duties. Carelessness is inexcusable. Know the difference between actions that require professional judgment and those that are more mechanical functions. Routine operations must follow sound, established procedures, backed by solid training and supervision of personnel. Professional judgement must reflect the current state of knowledge in the Fire Service, and you are expected to keep up with the changes.

You and the personnel under your command must learn to make only those decisions and take only those actions for which you are qualified. A fire fighter with first aid training should not be expected to judge the severity of internal injuries. A new Company Officer should not be left in command of a hazardous material incident unless he has specific training and experience.

In all instances, remember that your goal is not just to reduce the incidence of liability claims. Rather, the primary intent of risk management is to eliminate negligent actions and ensure public protection. By eliminating negligence and carelessness, you remove the causes for legal action, and there is little chance of loss from liability if claims are never filed.

Involve Everyone. As Fire Chief, you personally take very few of the actions that can expose a Fire Department to liability. Others drive the vehicles, conduct the inspections and perform the overhauls.

You cannot control everyone's actions directly. But you can inform the personnel under your command, whether paid or volunteer, on the need to understand and manage liability risk. Co-operation at every level of your organization is essential to protect against the threat of a liability suit.

As you walk through the risk management steps that follow, imagine every person involved with your Department following the same steps from his or her perspective, identifying exposures and implementing protection at the individual level. This awareness is a prerequisite for successful risk management.

Also remember that you are not alone in your efforts. Your direct superiors and other municipal officers play an important role in helping you manage risks. You can and should call upon your Risk Manager, if you have one, or your City Manager for information and assistance in developing a risk management program.

With these guiding principles in mind, we can turn to the basic steps involved in risk management for the Fire Service to acquaint you with the intimate knowledge required to effectively scrutinize and manage liability risks.

Steps in Risk Management

Risk management does not require a rigid framework with rules inscribed in concrete. Rather, the approach calls for a flexible method of using common sense to identify potential risks and losses, and deciding how best to cope with them. Keep in mind, however, that only general suggestions can be offered in this Guide. There is no single method that guarantees success. Many approaches work. You must adapt and modify the five essential ingredients to meet the individual needs of your Department.

Perhaps there is no more important way to start managing your liability risks than by simply declaring the overall purpose you intend to serve. The purpose of risk management may be stated in general terms to tell why the effort is being undertaken. The purpose may read, for example:

The purpose of risk management for the Fire Department is to provide a systematic tool for anticipating potential injuries, accidents, deaths and losses to the organization, and for selecting the most cost effective means of safeguarding the public and reducing losses to acceptable levels.

The objectives support the stated purpose of risk management, detailing the scope of the program and what is intended. The objectives of your risk management efforts guide its development and help keep the purpose clear in everyone's mind.

Suitable objectives may be to:

- Minimize public risk from Fire Department operations
- Enhance fire fighter safety
- Reduce the incidence of negligence by paid and volunteer fire personnel
- Reduce losses of fire equipment and materials
- Minimize exposure to potential liability loss at the lowest cost
- Identify operating flaws in established procedures

The objectives, in turn, should influence your Fire Department activities. In other words, the objectives establish the policy foundation for actions that will subsequently serve the risk management process.

Note that risk management may serve other important objectives in addition to reducing negligence and liability. Other objectives may be to:

- Control exposure to vandalism and other criminal acts
- Reduce losses due to accidents caused by others
- Reduce the adverse effects of natural disasters on Fire Department operation

Recall that risk management protects four things of value: people, property, net revenues and freedom from liability. All of these resources are of vital interest to the Fire Service. For the purposes of this Guide, however, we will focus on managing liability risks.

This is also a good time to assign a fire officer to be in charge of the risk management program within the Fire Department. As you will see, risk management is a continuing effort, not a one-time project. You may wish to designate the Administration Officer, Training Officer or Safety Officer as your risk manager, and place this person in charge of co-ordinating the collective efforts in the steps that follow.

Figure 3.1 presents a flowchart showing five principal risk management activities in the approximate order in which they proceed. Each step is discussed in the following section as you walk through a practical, step-by-step procedure that could be applied in your Department.

1. IDENTIFY AND EVALUATE EXPOSURES

Identifying loss exposures is arguably the most essential step in risk management. No exposure can be rationally managed until it is defined. Once exposure areas are pinpointed, the risks can be analyzed and management techniques chosen to work with and avert the problems.

Common exposures are usually easy to identify, but risks that are less frequent or relatively obscure are more difficult to see. For example, the potential for liability is readily apparent where a fire vehicle damages a parked car. On the other hand, risk exposure is less predictable when, say, a fire officer gives advice or information to building owners.

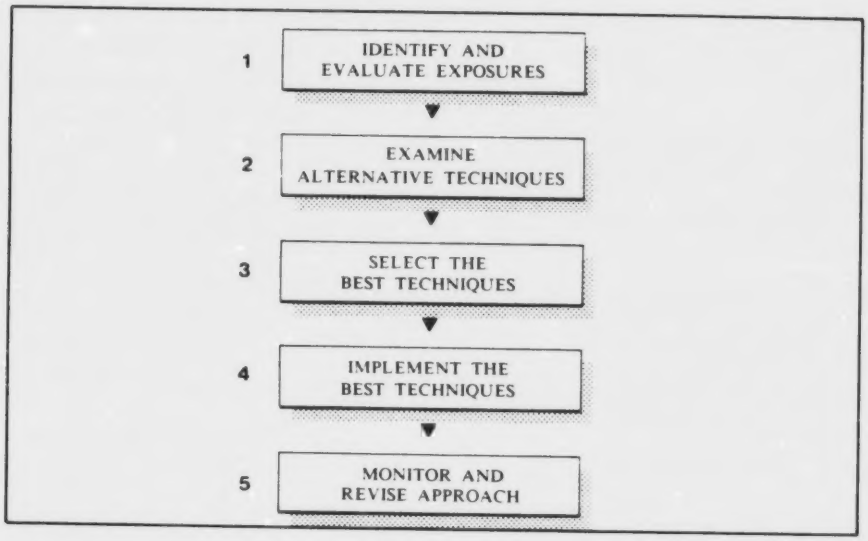

Figure 3.1 *Overview of Risk Management Activities*

Consider the following examples of actual events that highlight fire department and municipal exposure to loss:

Event: A loose gas line in the engine of an automobile caused a fire that was extinguished by the owner of the vehicle. The Fire Department arrived and authorized the removal of the van by a tow truck. A second fire occurred and destroyed the vehicle.

Loss: Because the Fire Department approved the towing of the vehicle without disconnecting the battery and eliminating the automobile electrical system as a potential ignition source, the Fire Department was successfully sued for negligence. Damages for the estimated value of the vehicle and court costs were awarded to the plaintiff.
Case: Theodore F. White v. Cumberland Fire Department
February 16, 1987.

Event: A fire engine and an ambulance collided during separate emergency runs, causing injury to four fire fighters and two ambulance attendants. The ambulance struck the rear driver's side of the engine, causing it to spin and roll on its side. A fire officer riding in the jump seat sustained injuries to his neck, head and face, and the ambulance attendants' were admitted to hospital. The other fire personnel were treated and released.

Loss: Three fire fighters and one fire officer out of commission for a combined total of several person-weeks. The fire engine, which had been completely refurbished, had to be replaced at a cost of $150,000. Location: Buffalo, NY 1983.

Event: A fire fighter fell through a defective roof of a building while searching for trapped residents during a fire. The city had taken ownership of the building months before for non-payment of taxes. The fire fighter sustained multiple fractures and burns, and subsequently sued the city.

Loss: Fire fighter was unable to return to duty for several weeks, and was awarded $2.6 million from the municipality. Case: Donnelly v. City of New York, 1986.

To reduce unexpected losses, your risk management program should follow a logical procedure in identifying risk. To be effective, the risk identification process should rely as much as possible on case-specific information. Through an intimate knowledge of your organization — your duties, responsibilities, and operations — you will be able to ascertain potential risk exposure areas.

There are a number of practical steps you can take immediately to identify loss exposures for your Department. Some are illustrated in Figure 3.2 and may include:

- Prepare and distribute a safety questionnaire
- Review your Department's loss claim history
- Review other communities' Fire Service loss history
- Inspect Fire Service facilities and adjacent grounds
- Examine procedure flowcharts to identify potential problems
- Research legal and liability cases related to Fire Departments
- Question individuals who have knowledge of your Department and the Fire Service on potential areas of liability
- Consult with your municipal manager, solicitor, and insurance agent on possible exposures
- Examine financial statements and other administrative records and files of your organization to identify potential losses
- Develop and maintain a current checklist of potential exposures that specifically reflects your Department

A detailed investigation of exposures will obviously uncover many more exposures than will a limited examination. You should know, however, that not all liability risks can be identified, regardless of the thoroughness of the investigation. Risk is an uncertainty, and unforeseen events will always occur. But the more exposure areas you identify, the more risk can be managed, and the greater the protection against liability loss.

Figure 3.3 provides a representative sample of potential exposure areas found in the Fire Service. There are many more that can and should be added to customize the list for your Fire Department.

Figure 3.2 *Possible Sources of Fire Service Exposure Information*

POTENTIAL EXPOSURE AREAS

ADMINISTRATION
- Level of service not set by bylaw
- Unwritten policies
- Inadequate operating procedures
- Failure to record rationale behind decisions
- Complaints not dealt with promptly
- Incomplete records

COMMUNICATION
- Failure to dispatch promptly
- Failure to advise callers of possible delay
- Lost messages
- Poorly trained dispatchers
- Poorly maintained equipment

EMERGENCY MEDICAL
- Giving improper treatment
- Using untrained volunteers
- Failure to transport injured to medical facilities
- Invalid certificates for personnel
- Lack of emergency medical equipment
- Poorly maintained equipment or supplies

FIRE PREVENTION INSPECTION
- Failure to apply codes uniformly
- Failure to notify owner of hazards
- Giving incorrect advice
- Failure to pursue compliance
- No right of entry to inspect
- Incomplete record of inspection

OVERHAUL
- Failure to halt rekindle
- Incomplete overhaul
- Excessive overhaul
- Failure to place warning signs
- Failure to alert owner of dangers

PERSONNEL
- Discrimination in hiring, promotion
- Failure to adequately train
- Failure to supervise personnel
- Failure to adequately equip for safety
- Selecting incompetent employees

Figure 3.3 *Potential Exposure Areas for the Fire Service*

PUBLIC EDUCATION

- Injuries on Fire Service premises
- Giving incorrect advice
- Failure to warn public of hazards

RESCUE

- Incomplete rescue
- Property damage during rescue
- Failure to rescue due to improper equipment
- Improper use of equipment
- Interfering with third-party rescue

SALVAGE

- Damage to adjacent properties
- Injury to fire-scene bystanders
- Improper or incomplete salvage
- Improper equipment
- Failure to secure items removed from building

SUPPRESSION

- Failure to provide sufficient water
- Delay in response
- Incorrect response
- Poorly maintained equipment
- Release of inaccurate information to media
- Failure to evacuate

VEHICLE OPERATION

- Vehicle accident
- Driving without proper license
- Fire fighter falls from vehicle
- Failure to keep certification records
- Failure to maintain vehicles
- Lack of vehicle insurance

GENERAL

- Slips on Fire Service property
- Negligent action of contractors, volunteers
- Injury from use of borrowed/rented fire equipment or apparatus
- Failure to investigate, satisfy claims

When potential liability exposures have been identified, they should be analyzed and evaluated as to their potential *frequency* of occurrence and *severity* of consequence. Exposure areas of high frequency and severity should be regarded with more attention than risks of lower estimated occurrence. Figure 3.4 illustrates this principle and provides a simple way to identify those areas that should receive priority attention.

Normally, risk exposures can be evaluated and priorized from a review of past loss or claim experience. Where there has been no historic loss, the risk evaluation must rely on subjective, expert opinion to determine the likelihood of the events and the severity of the consequences.

Once the exposure areas have been analyzed and evaluated, the most severe and frequent risks can be isolated to receive priority attention. In this manner, management can deal with risks that present the greatest threat to your organization. Exposure areas with less severe consequences and lower frequency can subsequently be managed as resources permit.

2. EXAMINE ALTERNATIVES TECHNIQUES

There are many creative ways to control risks and there are no clear guidelines on what works and what does not. Different types of exposures, each with their own unique frequency and severity, require different forms of management. Techniques can, however, be organized and examined for potential risk reduction properties.

As discussed earlier, there are two basic ways to manage risks:

- Risk Control
- Risk Financing

As you learned earlier, risk control actions seek to prevent the loss from happening or to reduce the severity of the outcome. Risk financing provides funds to pay for losses when a risk exposure is realized. Figure 3.5 presents the alternative techniques for exercising either risk control or risk financing.

Risk control techniques include:

- Exposure avoidance
- Loss prevention
- Loss reduction
- Segregation of exposures
- Contractual transfer

Exposure avoidance attempts to eliminate risk or the potential for loss by dropping a risky activity or responsibility from a Fire Department's mandate. This management tactic avoids the potential for loss by avoiding the service. The technique may be useful in instances where the activity or asset is not necessary to the mandate of the organization. A Fire Department may choose, for example, to cease providing emergency

medical care beyond first aid and CPR because of the potential for liability due to negligence. This would avoid risks associated with emergency medical services.

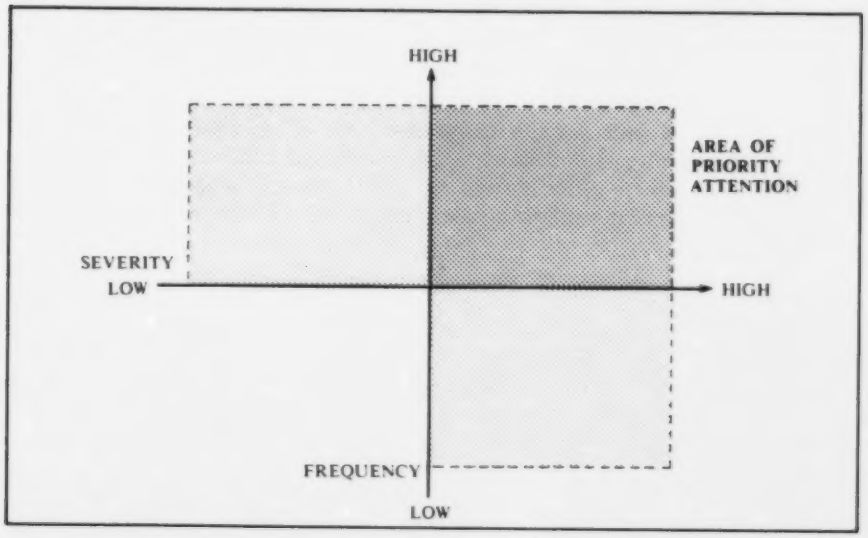

Figure 3.4 *Setting Priorities for Action*

In some instances, however, unwarranted exposure avoidance may actually increase liability potential. A Fire Department that is required by law to provide medical service could be held liable for failing to fulfill the mandate or responsibility expected and required of it.

Loss prevention attempts to influence the frequency or likelihood of loss by employing techniques to reduce the risk. For example, to reduce the risks of fire apparatus becoming involved in accidents with other vehicles, loss prevention techniques may dictate increased vehicle maintenance, driver training and certification, and more stringent vehicle operation policies, such as speed limits through intersections.
Loss reduction includes any safety measure used to reduce the size or severity of a loss. Installing a sprinkler system for a building is an example of a loss reduction technique. Providing seat belts in fire apparatus and requiring their use is an example of loss reduction for the Fire Service. It might not influence the probability that an accident will occur, but it does reduce the damage that results from an accident.

Separation of exposures is a risk control technique that attempts to influence the degree and severity of a loss by having contingency plans for each exposure area. For example, secondary backup systems and spare parts could be assembled for essential services for immediate use in case

primary systems fail, or having your fire fighters head for an incident in more than one vehicle in case one breaks down or is involved in an accident.

Contractual transfer refers to contracting with another entity (not an insurer) so that the new entity bears the entire exposure. An example of this type of risk control is the transfer of liability for allowing school children on a fire truck to a school board by means of a waiver contract. If you look on the copyright page of this Guide you will see a statement known as a disclaimer. This is a typical transfer of risk disclaimer.

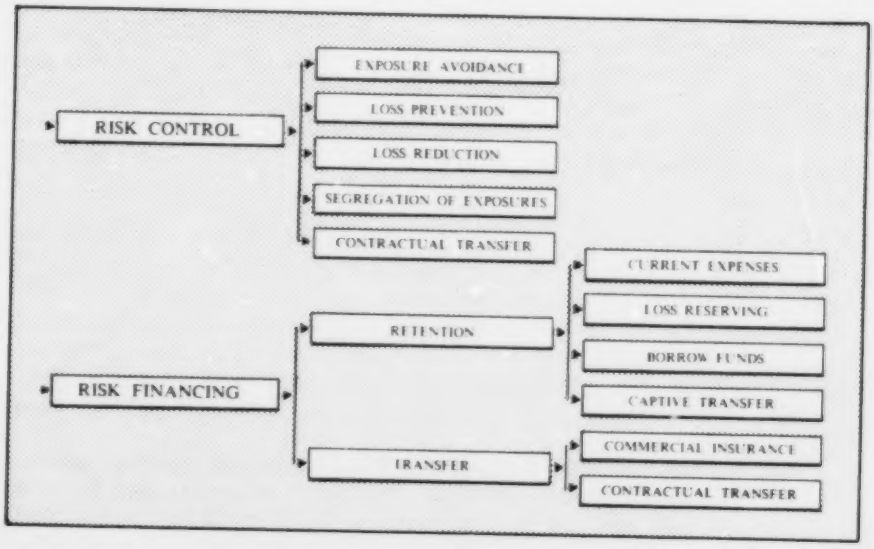

Figure 3.5 *Alternative Risk Management Techniques*

Regardless of the type or number of risk control techniques employed, a certain number of losses will always occur. To maintain the continued existence of the organization, all losses must be financed somehow.

Risk financing techniques provide the options for payment of a loss. Although the Fire Department may not control these options directly, you should be aware of the concepts of risk financing and be able to discuss them with your municipal manager or finance officer. The two principal types of risk financing are:

- Risk retention
- Risk transfer

The *Risk retention* option relies on internal funds to pay for a loss. The money may come from operating funds, assets and reserves, internally borrowed funds, or a similar source. Risk retention techniques can be classed according to the source of funds:

- *Current expensing of losses* is applied to expected losses that are usually budgeted to pay for relatively small, incidental losses. Some examples include the replacement parts for damaged fire vehicles, replacing retired ropes and recharging extinguishers. In the area of liability, some small claims may be paid directly, for instance where, say, a fire truck accidentally runs over a child's bike.
- *Loss reserving* entails foreseeing irregular accidental monthly losses and having funds available in a dedicated reserve to recoup the losses.
- *Borrowing funds for losses* occurs when substantial losses cannot be covered by normal budgetary provisions. This technique is considered risk retention, rather than transfer, because the borrower who suffers the loss transfers no real uncertainty to the lender. The borrower is obligated to repay the fixed amount of the debt for a given loss.
- *Captive Transfer* refers to the payment of losses through an insurance organization that is affiliated with the insured. A municipal insurance pool, for example, and an affiliated fire department are members of the same economic family. Losses in this case are not be transferred outside the organization.

Under the option of *risk transfer*, a Fire Department or municipality looks toward external sources for money that is needed to compensate for losses:

- *Commercial insurance* is a typical financial risk transfer arrangement where the insurer assumes an unknown financial burden for future losses in exchange for payment of a fixed premium. The sky-rocketing costs of commercial insurance has been one factor that has caused many municipalities to forego this option and adopt other forms of risk management.
- *Contractual transfer* for risk financing occurs when another entity assumes responsibility for the financial burden of a loss. This option is often exercised under contract provisions that are referred to as hold harmless agreements.

Effective risk management depends on a balanced blend of both risk control and risk financing techniques. These measures complement each other and are essential elements of a thorough risk management strategy. Risk control holds down the cost of risk financing, while the financing is essential when control measures fail or do not exist and loss occurs.

3. SELECT THE BEST TECHNIQUES

Selecting the most appropriate risk management techniques and implementing those options is crucial to protecting your organization. No matter how effective a control measure might be, if it is not implemented and used it will be worthless.

Selecting the best alternative technique to manage risk actually means choosing the most workable and feasible options available. The selection also depends on the characteristics of the risk itself, such as:

- Importance
- Frequency
- Severity

Risks that occur frequently but have few adverse effects may be retained by the Fire Department and controlled to limit their occurrence. Risks that are infrequent but possess the potential for catastrophic losses are usually insured or otherwise financed.

A Fire Department may use additional criteria to select risk management techniques, such as:

- Financial criteria
- Non-financial criteria

Financial criteria decisions are usually determined by an organization's willingness and ability to pay versus the extent of financial risk it is willing to take. If a Fire Department chooses to spend a large amount of its annual budget on risk financing options, it may affect the Department's objective of purchasing new equipment in the same fiscal year. In other words, a decision must be made on whether it is worthwhile to forego insurance so that the equipment purchase can be made. If the risk is of a high potential severity and moderate frequency, the decision not to insure could prove to be an expensive mistake if the risky event materializes.

Non-financial criteria may influence an organization in a number of ways. In the Fire Service, the mandate requires a certain minimum level of protection that is not related to financial criteria. Complying with a law or regulatory requirement may demand, for example, that financial criteria assume secondary consideration.

The selection process is a judgment call, based on a variety of factors. The selection will reflect a juggling of priorities, and should recognize the objectives, financial resources, and constraints of your Fire Service organization.

4. IMPLEMENT THE SELECTED TECHNIQUES

The implementation of risk management techniques requires two types of decisions:

- Technical
- Managerial

Technical decisions are far-reaching and include equipment selection, training content, procedures and fire fighting techniques.

Managerial decisions involve determination of the roles various fire officers and individuals will assume, and the interaction between them.

To more fully appreciate the traits of an effective risk management plan, consider some techniques that have been successfully implemented in North American Fire Departments. Figure 3.6 lists examples of practical programs in each major area of exposure. This list is neither detailed nor exhaustive. Many other examples could be suggested.

Some Fire Departments have thoroughly scrutinized their regulatory bylaws to remove any provisions that impose a duty on a fire officer to enforce the bylaw. For example, a fire prevention bylaw that includes the phrase: "The Fire Prevention Inspector *shall* enforce the provisions of this bylaw . . . " exposes the officer and the Fire Department to unnecessary risk. Using "may" instead of "shall" eliminates the duty of enforcing the bylaw and reduces the chances of negligence.

Another form of protection can be applied to fire inspections. A disclaimer can be added to inspection and building permits that disclaims local government responsibility for unforeseen hazards. Wording may be:

> *"This permit confirms that inspections pursuant to the (municipality) Fire Protection bylaw have been completed and that no substantive violation of fire or safety requirements has been observed. This permit is not a warranty that the subject building complies with all municipal and provincial regulations governing building fire protection, nor that the building is without defect." (Adapted from UBCM, 1986)*

Every Fire Department duty and responsibility needs to be evaluated and mitigating strategies should be adopted where necessary. This type of implementation strategy reflects the thoroughness of a risk management program, and the extent of questions that must be asked to ensure your Department's risk exposure areas have been identified, evaluated and managed.

Figure 3.7 provides an example of one approach to selecting management techniques. As the questions in the left-hand column are asked and answered, recommendations are offered in the right-hand column to identify useful techniques.

A similar type of selection procedure can be structured for every risk exposure area identified, as shown in Figure 3.8. If implementation deficiencies exist for any area of service, this checklist format can easily identify them. Running through this type of checklist can help you evaluate your organization's susceptibility to liability exposures, and suggest changes that are required.

POTENTIAL EXPOSURE AREAS

ADMINISTRATION	■ Level of service not set by bylaw ■ Unwritten policies ■ Inadequate operating procedures ■ Failure to record rationale behind decisions ■ Complaints not dealt with promptly ■ Incomplete records
COMMUNICATION	■ Failure to dispatch promptly ■ Failure to advise callers of possible delay ■ Lost messages ■ Poorly trained dispatchers ■ Poorly maintained equipment
EMERGENCY MEDICAL	■ Giving improper treatment ■ Using untrained volunteers ■ Failure to transport injured to medical facilities ■ Invalid certificates for personnel ■ Lack of emergency medical equipment ■ Poorly maintained equipment or supplies
FIRE PREVENTION INSPECTION	■ Failure to apply codes uniformly ■ Failure to notify owner of hazards ■ Giving incorrect advice ■ Failure to pursue compliance ■ No right of entry to inspect ■ Incomplete record of inspection
OVERHAUL	■ Failure to halt rekindle ■ Incomplete overhaul ■ Excessive overhaul ■ Failure to place warning signs ■ Failure to alert owner of dangers
PERSONNEL	■ Discrimination in hiring, promotion ■ Failure to adequately train ■ Failure to supervise personnel ■ Failure to adequately equip for safety ■ Selecting incompetent employees

Figure 3.6 *Examples of Potential Exposure Areas and Risk Management Techniques*

RISK MANAGEMENT TECHNIQUES

ADMINISTRATION

- Upgrade standard operating procedures to meet current standards (NFPA)
- Council to adopt bylaw on level of Fire Service to be provided
- Document Fire Service decisions
- Council to indemnify employees, officers and volunteers
- Document how complaints are addressed promptly

COMMUNICATION

- Ensure specific dispatch policies are in place
- Ensure 24-hour service available for communication system
- Provide redundant systems that bypass telephone and central dispatch
- Install tape playback on incoming telephones
- Alert callers of any possible delay in response

EMERGENCY MEDICAL

- Limit emergency services to expanded first aid and CPR
- Ensure current first aid certification
- Ensure adequate equipment and supplies in all vehicles
- Establish specific policies
- Provide periodic testing of emergency medical personnel

FIRE PREVENTION INSPECTION

- Add disclaimers to permits or inspection certificates
- Require complete records of every inspection
- Write letters to inform violators of hazards
- Issue citations and seek judicial intervention when hazards are imminent
- Post signs to warn occupants of hazards
- Order owner to provide 24-hour fire watch

OVERHAUL

- Alert property owner to possibility of rekindle
- Have risk management officer on-site to advise on extent of overhaul
- Set a fire watch after overhaul
- Train fire fighters in up-to-date construction methods and materials
- Post warning signs noting areas exposed to dangerous chemicals

PERSONNEL

- Screen applicants to ensure competent personnel
- Establish performance evaluation for all personnel
- Purchase protective equipment that meets NFPA standards
- Discipline personnel who disregard safety policies
- Require training through provincially recognized programs

POTENTIAL EXPOSURE AREAS

PUBLIC EDUCATION	■ Injuries on Fire Service premises ■ Giving incorrect advice ■ Failure to warn public of hazards
RESCUE	■ Incomplete rescue ■ Property damage during rescue ■ Failure to rescue due to improper equipment ■ Improper use of equipment ■ Interfering with third-party rescue
SALVAGE	■ Damage to adjacent properties ■ Injury to fire-scene bystanders ■ Improper or incomplete salvage ■ Improper equipment ■ Failure to secure items removed from building
SUPPRESSION	■ Failure to provide sufficient water ■ Delay in response ■ Incorrect response ■ Poorly maintained equipment ■ Release of inaccurate information to media ■ Failure to evacuate
VEHICLE OPERATION	■ Vehicle accident ■ Driving without proper license ■ Fire fighter falls from vehicle ■ Failure to keep certification records ■ Failure to maintain vehicles ■ Lack of vehicle insurance
GENERAL	■ Slips on Fire Service property ■ Negligent action of contractors, volunteers ■ Injury from use of borrowed/rented fire equipment or apparatus ■ Failure to investigate, satisfy claims

Figure 3.6 *Examples of Potential Exposure Areas and Risk Management Techniques (Continued)*

RISK MANAGEMENT TECHNIQUES

PUBLIC EDUCATION	■ Ensure public information officers are properly trained ■ Officers should give facts only, never opinions ■ Caution *other* fire personnel not to give advice to public ■ Use hold-harmless agreements for demonstrations to public
RESCUE	■ Prepare written policies on rescue ■ Ensure proper equipment and supplies ■ Do not interfere with third-party attempts at rescue ■ Ensure buddy system of rescue ■ Ensure specific training in use of equipment
SALVAGE	■ Have risk management officer on-site to advise on salvage ■ Ensure specific training ■ Supervise all salvage operations ■ Provide security for items removed from buildings ■ Photograph salvage operations
SUPPRESSION	■ Conduct pre-fire planning inspections ■ Require thorough, written incident reports ■ Do not leave equipment/apparatus unattended ■ Establish policies for evacuation and train fire officers ■ Ensure fire fighters are trained periodically in up-to-date techniques ■ Photograph events at every call
VEHICLE OPERATION	■ Ensure all *potential* drivers are licensed and trained in emergency driving ■ Document the training given to drivers ■ Ensure seat belts in every vehicle, every seat ■ Require seat belts to be used, without exception ■ Certify, license and regularly inspect all vehicles ■ Ensure adequate vehicle insurance
GENERAL	■ Examine Fire Service property for hazards — sprinkler heads, gravel, oil, standing water, etc. ■ Require hold-harmless agreements for outside users of Fire Service equipment, land, buildings, etc. ■ Ensure contractors are properly bonded and insured ■ Photograph and record all possible claims

Regardless of the approach you take, reducing liability calls for an all-out attack on the three key elements of negligence. You will recall from Section 2 three ingredients:

- Duty of care
- Failure to meet a standard of care
- Damage, injury or other type of loss

All three factors are needed to substantiate a claim. Risk management attempts to reduce negligence by removing one or more of these elements. The best way to avoid a claim is to eliminate the likelihood that a wrong will occur.

5. MONITOR AND REVISE APPROACH

A risk management program may be comprehensive, but it is not a one-time task. Risk exposures are constantly changing, new management techniques are being devised and new regulations govern the Fire Service. As a result, the need to monitor and revise risk management programs is on-going.

Nor is risk management an exact science. Monitoring provides the necessary feedback to check if the preliminary choice of certain risk control and financing techniques were the best ones. Monitoring permits an evaluation as to whether a different mix of options may be more feasible in light of the changing conditions of insurance provisions.

Monitoring also provides your Fire Department with an intimate knowledge of the strengths and weaknesses of the program, and an opportunity to bolster or adjust the program as required. In essence, the monitoring step permits the risk management program to renew itself, to remain current and relevant.

AREA OF SERVICE ✓ When review is complete	BYLAWS/POLICIES	PROCEDURES	TRAINING	PRACTISE	MOTIVATION	ACQUISITION	MAINTENANCE
ADMINISTRATION							
COMMUNICATION							
EMERGENCY MEDICAL							
FIRE PREVENTION							
OVERHAUL							
PERSONNEL							
PUBLIC EDUCATION							
RESCUE							
SALVAGE							
SUPPRESSION							
VEHICLE OPERATION							
GENERAL							

Figure 3.7 *Guide to Identifying Suitable Risk Management Techniques*

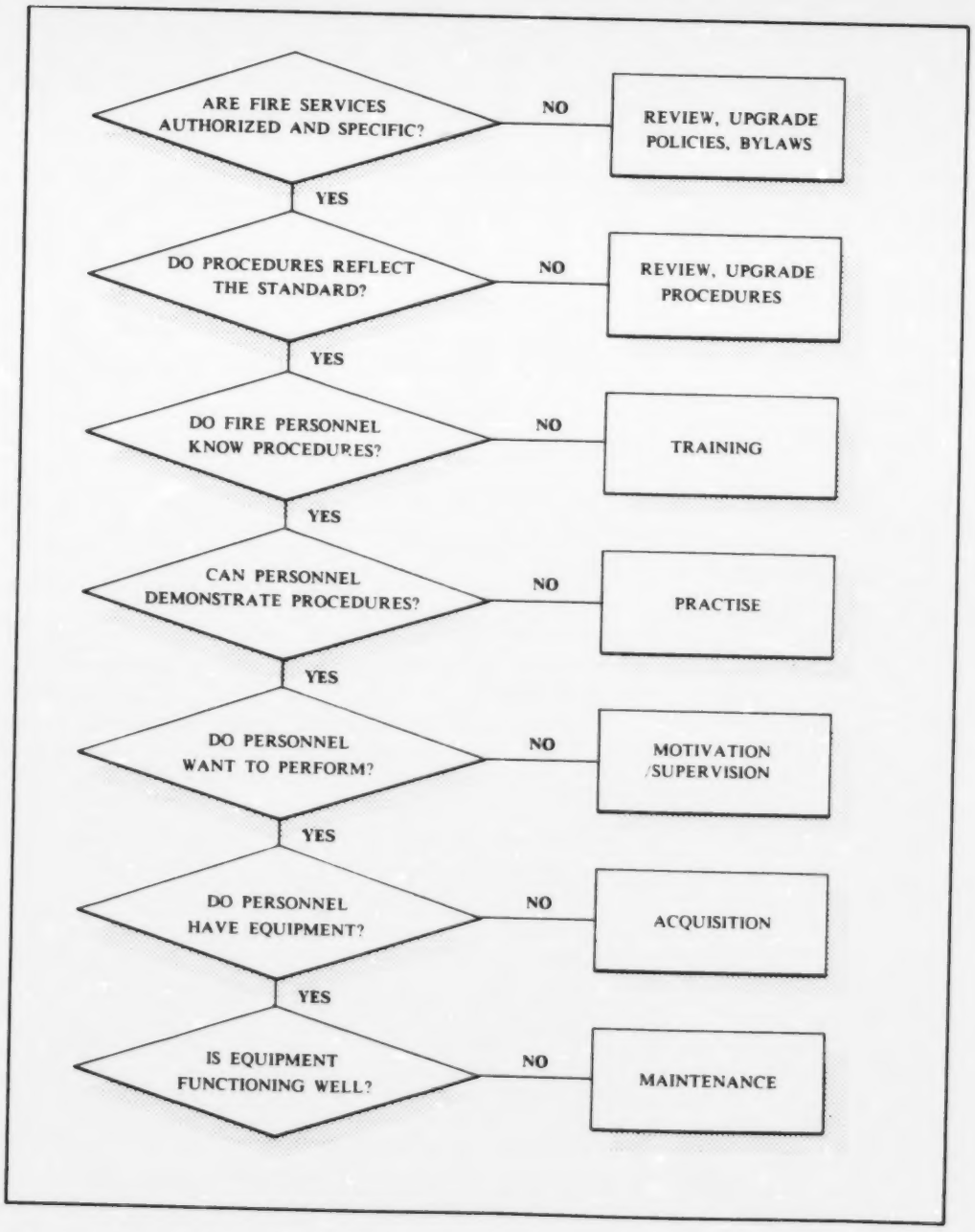

Figure 3.8 *Risk Control Technique Checklist*

Suggested Risk Management Questions

This Guide can only relate techniques that have proven helpful for other Fire Departments. It cannot provide answers, but it can suggest questions for you to pursue.

Some of the more important questions to ask are listed on the following pages. The questions are organized to help you set agendas for meetings with appropriate persons in your community. Adapt and revise these lists to meet the specific needs of your Department and your municipality. Individuals you should consult include the following:

City Manager, Municipal Manager or Risk Manager if there is one, or perhaps the Public Safety Officer or Finance Officer who is knowledgeable and responsible for risk management at the community level.

Legal Counsel, Municipal Attorney, Staff Solicitor or contract law firm who is available to offer specific legal advice on issues of negligence and liability. Make sure it is someone you trust.

Insurance Agent for the municipality, or a department head in Finance who is in charge of self insurance programs for the community.

Fire Department Officials, within your own Department with whom you can discuss a current evaluation of your Department, its personnel and policies. Consultation within your Department may extend to the lowest ranks, especially in identifying potential exposure areas.

It may be wise to ask for responses to certain questions *in writing*, to document the assumptions and knowledge on which you base your actions.

Questions for the City Manager

1. Is there a formal risk management program in our community, specifically at the municipal level of government? If so, who manages the program?

2. Has Council adopted operating guidelines for a municipal risk management program?

3. What risk management programs are already in place at the municipal level (historic claims in computer data bank, personnel procedures written and formally adopted, etc.)?

4. What authority does the Risk Manager or similar post have to advise Council on the need for risk management techniques?

5. Has City Council specifically stated the level of service they expect the Fire Department to provide?

6. Has Council specifically examined and set out the standard for service for the Fire Department?

7. What claims have been made against the Fire Department in the past? Obtain details of each claim, such as the circumstances of the event, losses and probable causes.

Questions for the Legal Counsel

1. Which federal, state or provincial and local laws require or permit action by the Fire Department? Does any federal, state, provincial or local law say the Fire Department *shall* do something? Do any of these laws impose a specific duty on the Fire Chief or the Fire Department? If so, what is that duty and what is its scope?

2. Do any bylaws impose a duty on the Fire Department or its officers to enforce the provisions of the bylaw? Is the Fire Department responsible for enforcing state or provincial fire regulations as well as local fire prevention bylaws?

3. Which specific actions should the Fire Department *not* engage in under any circumstances?

4. What is the standard of care against which Fire Department personnel will be measured?

5. Which specific Fire Department actions are immune from liability (governmental vs. proprietary, planning vs. operational, ministerial vs. discretionary)? Which types of decisions are policy and which are operational?

6. Has the municipality acted to protect its officers and employees against personal liability? If so, how? Can any of the members of the Fire Department be held personally liable for actions performed in the conduct of their profession? If so, under what conditions?

7. What activities of the Fire Department can expose personnel and the municipality to liability? What is the extent of liability for these areas of activity? Can fire officers be liable for giving incorrect advice?

8. What can be done to protect fire personnel from personal liability?

9. What should members of the Fire Department do when dealing with complaints to avoid admitting liability or providing damaging information?

10. How can fire officers stay continually aware of new developments in negligence law arising from court decisions or new legislation?

11. How can a fire officer or fire fighter prepare for a courtroom appearance?

12. What disclaimers can be added to fire prevention inspection certificates to limit the responsibility of the Fire Department or municipality? What is acceptable wording for waiver clauses intended for contractors and equipment rental?

Questions for the Insurance Agent

1. Is the municipality partly or fully self-insured? If so, identify which actions are not covered by commercial insurance. What is the extent of self insurance?

2. Who is the commercial insurance carrier for the municipality? Who in the municipality is responsible for overseeing the commercial insurance contract?

3. What is the system for recording and reporting possible claims? What historic claims have been brought against the municipality? Against the Fire Department? How have these claims been resolved? Where can we go to obtain information of historic liability claims in other municipalities?

4. Are negligent actions by municipal employees covered under the current insurance agreement? What Fire Department activities are not covered by insurance? Should fire officers purchase individual liability insurance to protect themselves from professional liability?

5. Are contractors operating under the direction of the Fire Department covered for negligent actions?

6. Does the insurance company consider a volunteer an employee? Are volunteers covered by the insurance agreement? If so, under what conditions would they not be covered?

7. How well does the insurance agent understand Fire Department operations? Who is qualified to conduct a liability risk audit for the Fire Department?

8. In which areas of municipal operation is it difficult to buy adequate insurance coverage? What types of Fire Department exposures are uninsurable (pollution, environmental impairment, gross negligence)?

9. What is the rationale for determining insurance premiums? Would premiums be favorably affected by a stringent risk management program in the Fire Department?

10. Is the insurance coverage adequate given the recent trends in awards and settlements? What are the indirect or hidden costs of liability claims? What is the period covered under the current insurance policies? Are copies of the liability insurance policies readily available?

11. What are we protected against, and where are we at risk? Are the following areas adequately covered?

    - Liability
    - Non-owned liability
    - General liability
    - Errors and omissions
    - Workers' compensation
    - Voluntary compensation for volunteer workers
    - Group life insurance
    - Extended health
    - Dental
    - Disability
    - Salary continuation
    - Environmental impairment liability
    - Employee dishonesty
    - Property, portable equipment

12. What are the differences and similarities in professional liability, general liability and vehicle liability insurance? Does the current insurance policy provide emergency medical related liability coverage?

13. What are the insurance company's obligations in providing coverage? What exemption clauses are in place that might leave the Fire Department unprotected from liability claims? What role does the insurance company play in legal proceedings?

14. What notification requirements apply, where the Fire Department must notify the insurance company of pre-existing conditions and changes in operation, that may result in claims? What time restrictions apply to such notification?

Questions for Fire Department Officials

1. Do municipal bylaws or regulations clearly set out the administrative responsibilities of the Fire Department? Do we have the qualified personnel and financial resources to fulfill the legal duty imposed on us by Council?

2. What constitutes the "standard" of professionalism in our Fire Department (IFSTA training, journals, NFPA publications, etc.)?

3. In what areas of operation are we exposed to liability risk? What claims and suits have been filed against the Department in the past?

4. What programs do we have in place today that serve our interests in reducing liability risk?

5. Does everyone who renders emergency medical care have a current certificate? Is the certificate recognized by the state or provincial authority?

6. Are our standard operating procedures up-to-date and do they reflect the latest techniques? How do we know? Are standard operating procedures written and easily communicated?

7. Does every person who could be required to drive a fire vehicle have the training and certification to do so?

8. Are job descriptions available for each fire officer? Is the Fire Department chain of command defined to detail who will deal with situations at an emergency scene?

9. Are all apparatus and equipment procured under carefully drawn specifications that reflect accepted standards (such as NFPA)? Do we have a specific vehicle and equipment inspection and maintenance program in place and is it operational?

10. Does the Department have an organized safety program with assigned representatives from the divisions? Are accidents and injuries carefully investigated with a view toward prevention?

11. Are all fire personnel adequately trained for the job they are expected to do? How do we know? Is there a structured training program within the Fire Department? Do we train new personnel on procedures and services before we depend on them? Are all employees encouraged to participate in continuing education, such as distance learning, seminars, workshops and conferences?

12. Are all fire personnel supervised by someone with superior training?

13. Can we always find an incident, personnel or training file when we need it? Are our files kept up-to-date to avoid backlogs? Are reports routinely used to document all fire services performed? Do we have an established procedure for filing all reports?

SUMMARY

Liability

As Fire Chief, the concern for liability will be with you for the rest of your professional career. It is not a trendy issue that will go away with time. Every municipal office is exposed to the risk of liability, especially a safety service organization such as the Fire Department. You should now be aware of how negligent actions can directly affect you and the success of your Department.

You should also have an appreciation of how losses can occur in your organization through negligent actions. Remember that negligence depends on:

1. A duty of care
2. Failure to take reasonable care
3. The failure results in a loss

Some examples of possible negligent actions by a Fire Department were discused, such as:

Negligent Actions of Failure to Act
These actions might include flushing gasoline into drainage systems, loaning defective equipment, or failure to inspect all new buildings, if required to do so.

Negligent Misstatements
Such actions include giving incorrect information or advice that results in damage or loss. If a person relies on information supplied by fire personnel, and if it is found to be incorrect, it can lead to an action against the Fire Department.

Policy vs. Operation Decisions
These actions involve decisions that may be made at lower levels of the hierarchy that result in loss. Policy decisions made by Council or other discretionary authorities are more immune from claims of negligence.

Risk Management

While the threat of liability is clear, the purpose of any corrective action is not simply to avoid monetary losses from such claims. This approach would place too much emphasis on risk transfer and financing techniques. The focus of your actions should be to *prevent the negligence* that can lead to liability suits, to control the risks by controlling your actions and those of your personnel. Remember, if there is no loss, there can be no valid claim of liability. This is the best way to protect your organization and the public.

Dealing with these issues requires caution, sensitivity and commitment. Caution is needed in developing standard procedures for your Department, in training your personnel, in supervising their activities and in documenting decisions made and actions taken. Success depends on your sensitivity to the thousand potential forms of negligence, to the role of the Fire Department in protecting taxpayers from loss, and to the concerns of every fire fighter and fire officer for safety and security. Finally, you need a commitment to the people you serve and with whom you work, to foster a heads-up attitude that encourages every employee and volunteer to adopt a personal risk management program, as well as a commitment to the long-term protection of the Fire Service organization.

Risk can never be eliminated, but there is much you can do to protect yourself and your Department, to reduce negligent actions, and to prepare for possible claims. The collection of actions that you can take to reduce the threat of legal action is embodied in risk management.

Benefits and Limitations of Risk Management

In many municipalities, the Fire Service no longer has the luxury of relying on insurance as the principal way of dealing with liability claims. Risk management is the type of administrative tool that can successfully minimize uninsured risks. This list of risk management benefits illustrates how this approach can protect and improve a municipal Fire Department.

GENERAL

- Minimizes public risks from Fire Department operations
- Provides a systematic tool for anticipating potential losses
- Provides a way to select cost effective means of reducing losses
- Reduces the incidence of negligence and liability loss
- Reduces losses of fire equipment and materials
- Reduces losses caused by others
- Reduces adverse effects of natural disasters
- Controls exposure to vandalism and other criminal acts
- Provides evidence that you are taking steps to manage Fire Department risks

ADMINISTRATIVE

- Can be performed in-house
- Works within Standard Operating Procedures (SOPs)
- Serves as a policy foundation for Fire Department activities
- Provides options for administrators
- Serves as an on-going format for evaluating Fire Department operations

OPERATIONAL

- Priorizes risks so greatest threats can be identified
- Provides management choice of risk control or financing
- Allows evaluation of Fire Department by use of an implementation checklist
- Enhances fire fighter safety by identifying and managing risks

Because risk management is an emerging form of administration, it is not without its complexities and wrinkles. As the process grows and is used, however, the concepts will likely be more welcomed and understood. Currently, risk management has several limitations. Some of these are included in this list.

GENERAL

- Risk is uncertainty, and unforeseen events will always continue
- Liability losses will therefore still occur
- Not all liability risks can be identified
- No single risk management method works universally

ADMINISTRATIVE

- Since each Fire Department has varying risk exposures, different potential for liability exists
- Risk management must be tailored to each Department
- Estimating loss exposures relies on subjective judgement
- Selecting management techniques relies on subjective judgement
- Outside assistance may be required to complete risk management analysis
- Dedicated position as Risk Management Officer is required

Recommendations

One of the original objectives of this Guide was to suggest specific actions that you, the Fire Chief, can do **today** to protect yourself, your organization and your municipality from liability claims. As you have seen, there are literally hundreds of risk control and financing opportunities to explore, and many of them require the involvement of others. As a starting point, however, you might want to consider taking the following steps as soon as possible.

While these steps will get you started, you will have to explore this issue further, to develop subsequent steps in the program, and to satisfy yourself that you are doing all you can to manage your liability risks.

STEPS YOU CAN TAKE IMMEDIATELY

1. Designate a risk management officer within your organization.

2. Arrange meetings with your municipal manager, solicitor, insurance agent and the fire officers within your Department. Use the questions listed at the end of Section 3 as meeting agenda. Ask for specific answers, in writing where appropriate.

3. Meet with your municipal manager and other fire officials to develop a purpose statement for risk management, and outline the objectives that best suit your organization.

4. Begin now to educate *everyone* in your organization about the potential for liability and what can be done about it. Prepare a brief policy paper that outlines your intentions with respect to these issues. Get people talking about it.

5. Create a master list of possible exposures for your Department.

6. Review the selected references shown at the back of this Guide and collect articles of interest to you.

7. Contact your professional organizations to find out other materials and sources of information on the issue of liability and risk management. Look for and attend seminars on the subject, where offered.

8. Start a Risk Management notebook and record each action you take.

As you develop your liability risk management program, consider the following measures to reduce the likelihood of a civil action for negligence. These steps will also reduce the likelihood of losing a case if an action is launched.

1. Familiarize yourself with the law relating to negligence to determine what kinds of activities attract negligent actions.

2. Be aware of what actions fall within the course of duties of employees in the Fire Service, and what actions may not (e.g. what happens when a fire fighter uses a Fire Department vehicle to pick up a pizza for dinner, and gets into an accident with it?)

3. Examine your bylaws for any provisions that place a duty on the members of the Fire Service to carry out procedures or enforce the bylaws. An example of phraseology imposing a duty is "the Fire Chief *shall* . . . "

4. Examine your bylaws for areas of enforcement difficulty, and consider requesting your municipal council to make a policy decision in that regard, and make sure any directives to cease enforcement have the council or board sanction.

5. Speak to the municipal or regional district solicitor and discuss the preparation of an indemnity form to protect the Fire Department from liability when persons who are not Fire Service personnel borrow equipment.

6. Make sure that all staff whose duties include the giving of advice to the public are aware of the need to give factual advice, not opinions. Others whose duties do not include giving advice should be advised not to do so.

7. Set up a system for reporting incidents that could lead to legal action.

8. In the event a legal action is pending:
   a. Designate one person as spokesperson, if necessary, but try to refer all questions to the municipal solicitor.
   b. Have all parties to the potential action make careful and independent notes to the event.
   c. Begin a file, and include copies of all notes, photographs, documents, etc.
   d. Pass on all information to the solicitor handling the case.

Notes

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